

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1101 of 1998

in

SPECIAL CIVIL APPLICATION No 2687 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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JB TRANSPORT COMPANY

Versus

SHANKARLAL @ MAVARAM NATHUJI PATEL

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Appearance:

MR SUKHVASI B SHARMA for Appellants  
MR MUKUL SINHA for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 09/12/98

C.A.V JUDGEMENT (Per A.L. Dave, J.)

1. The appeal is admitted. Mr. Mukul Sinha,  
appearing on caveat, waives service of notice of

admission on behalf of the respondent. With the consent of parties, the matter is taken up for final hearing.

2. We have heard Mr. S.B. Sharma for the appellant and Mr. Mukul Sinha for the respondent.

3. The present appeal arises out of a decision rendered by this Court in Special Civil Application No.2687 of 1998 on 22nd July, 1998, dismissing the petition. The appellants are the original petitioner, who had challenged the order of the Labour Court, Ahmedabad, in Reference (L.C. IDAT) No.428/97 (Old No.1380/95), passed vide Ex.17 in the nature of order below Ex.9 and 10 before that Court. By virtue of that order, Vakalatnama and authorisation produced before that Court on behalf of the appellants were rejected by the Labour Court on the ground that the Vakalatnama and the authorisation were objected to by the opponents under Section 36 of the Industrial Disputes Act, 1947.

4. The learned Single Judge of this Court, while deciding Special Civil Application No.2687 of 1998, confirmed the findings of the Labour Court and rejected the petition, which has given rise to the present appeal.

5. An Industrial Dispute is pending before the Labour Court between J.B. Transport Company, Shri Sunilbhai Jagannath Agrawal and Shri Jagannathprasad Chitormal(appellants herein) on the one hand and Shri Shankarlal alias Mavaram Nathuji Patel (respondent herein) on the other hand. The appellants were represented by Shri S.B. Sharma in that matter by virtue of Vakalatnama which was filed on 11th February, 1997, vide Ex.9. To this, the respondent side raised an objection. Therefore, at a later point of time, on 10th July, 1997, an authorisation was filed in favour of Mr. S.B. Sharma by the appellants which was again objected to by the respondent side. The objections were raised by virtue of provisions of Section 36 of the Industrial Disputes Act, 1947 and after hearing both the sides, the learned Judge of the Labour Court came to a conclusion that the present appellants could not be represented by Mr. S.B. Sharma, keeping in light the provisions of the Industrial Disputes Act. If the provision is perused, it indicates that a workman in a dispute can be represented by any member of the executive or other office bearer of a registered trade union of which he is a member. Likewise, an employer can be represented by an officer of an association of employers of which the employer is a member or by an office of a federation of associations of employers to which such association of employer is

affiliated or where the employer is not a member of any association of employers, it can be represented by an officer of any association of employers connected with or by any other employer engaged in the industry in which the employer is engaged. Sub-section (3) of Section 36 also provides that no party to a dispute is entitled to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before a Court. The learned Labour Court Judge, therefore, after considering the rival side contentions came to a conclusion that Mr. Sharma, through him the appellants desired to be represented, was a practising advocate in the first instance and was not an officer of an association of employers and, therefore, rejected both the Vakalatnama and the authorisation of appearance.

6. While deciding the Special Civil Application, the learned Single Judge came to the same conclusion and observed that :

"....Mr. Sharma has not produced any documentary evidence before this Court or before the Labour Court to show that the said Akhil Union has appointed him as an officer by its resolution or by any order of the said Akhil Union. Merely because he happened to be a General Secretary, it could not be said that he is an officer of the association. By becoming a General Secretary, he becomes an office bearer. There is difference between "office bearer" and the "officer". The officer is an employee of the association or an institution whereas, the office bearer would become an employer."

7. Mr. Sharma appearing for the appellant submitted that the distinction drawn by the learned Single Judge and the Labour Court Judge between an "officer" and an "office bearer" is not correct. He submitted that he is the General Secretary of Akhil Gujarat Employers' Union, Ahmedabad and, by virtue of that, he can represent the employers who are the members of that union and the appellants are members of the said union. He has placed reliance on several decisions of various Courts and we have taken a close look of the said decisions.

8. On the other hand, Mr. Mukul Sinha appearing for the respondent has strongly opposed this appeal. He has drawn our attention to the factual aspects and has also produced certified copies of relevant documents from the record of the Labour Court. His contention is that, Mr.

Sharma appeared as an advocate on behalf of the appellants before the Labour Court by filing a Vakalatnama. When that was objected to, he filed his authorisation to represent the employers as General Secretary of the Union representing the employer. There is nothing to show that he is an officer of the association of employers and the authorisation is filed only to bypass the provision of Section 36 and defeat the spirit of the law. There is no illegality or error committed in the impugned orders. He, therefore, submitted that the appeal, therefore, cannot be admitted at all and be dismissed.

9. We have considered the rival contentions in light of the provisions of the Act. It amply clear that by virtue of sub-section (3) of Section 36 of the Industrial Disputes Act, a legal practitioner is forbidden from appearing in any proceedings before a Court. It is also clear that there is nothing on record to show that Mr. Sharma, who later on filed his authorisation to appear on behalf of the employer, is "an officer of the association representing the employers". Considering the provision and spirit of Section 36 of the Industrial Disputes Act, it is amply clear that the Legislature expected only an officer of the association representing the employers to be permitted to represent the case of employers as against "officer bearers of a union of workmen". Mr. Sharma is the General Secretary of Akhil Gujarat Employers' Union, Ahmedabad, which, for the purpose of the Act, has to be construed as "an association of employers". It, therefore, cannot be said that an error is committed either by the Labour Court or by this Court while not permitting Mr. Sharma to represent the case of the appellants.

10. Mr. Sharma has placed reliance on several decisions to substantiate his argument that a legal practitioner, if he is an office bearer of the union, can also represent the case of the party. In this regard, heavy reliance is placed by him on a decision of Karnataka High Court in the case between Hotel Ashok and Presiding Officer, Additional Labour Court, as reported in FLR 1984 (48) 297. We have gone through that decision and find that, in that decision also reliance was placed on decision of the Apex Court in Pradip Port Trust v. Their Workmen, AIR 1977 SC 36, wherein the Apex Court has observed as under :-

"The right is extended to representation by the office bearers of the federation of the union and the officers of the federation of employers. The

provisions of Section 36(1) and 36(2) confer the respective parties absolute rights of representation by persons respectively specified therein."

This indicates that the employers can be represented by officers of either their association or federation of associations as against office bearer of union or federation of unions.

11. In light of the above observation of the Hon'ble Supreme Court and upon plain reading of the provisions of Section 36 of the Industrial Disputes Act, in our opinion, decision of Andhra Pradesh High Court rendered in the case of A.P. State Electricity Board, Hyderabad v. A.P. Power Diploma Engineers Association Trade Union, as reported in 1994 II CLR 259, wherein it has been observed that "...above legal practitioners being the Honorary Joint Secretaries of the Federation of Andhra Pradesh Chambers of Commerce and Industry and there being no embargo for the legal practitioners being the office bearers of the Federation of A.P. Chambers of Commerce and Industry, come within the ambit of Section 36(2)(a) of the Industrial Disputes Act, 1947 and are entitled to represent the employer i.e. the petitioners, but in the capacity as office bearers" cannot help the appellant.

12. Thus, considering the decisions cited by Mr. Sharma, there cannot be any dispute about the fact that a qualified legal practitioner can appear on behalf of a party and represent the case, but the only proviso applicable to it would be that he must be either an office bearer and/or a member of executive of a registered trade union where he represents a workman or he must be "an officer of an association of employers" to which the employer is a member where he represents the employer. In the instant case, there is nothing to show that Mr. Sharma is the officer of the association/union of the employer. On the contrary, he has initially filed his Vakalatnama and then authorisation as General Secretary and, therefore, keeping in light the facts of the case, we are of the opinion that he could not have been permitted to represent the appellants before the Labour Court. As such, there is no error committed in any of the orders impugned in this appeal calling for any interference except that in light of the peculiar facts of the case, in our opinion, the order or of the Labour Court awarding costs of Rs.1500/- from the appellant to the respondent and confirmed by the learned Single Judge needs to be set aside. Appeal, therefore, would stand

allowed to that extent. No orders as to costs.

[ C.K. THAKKAR, J. ]

[ A.L. DAVE, J. ]

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